IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

OP.No. 32431 of 2000(J)

PETITIONER:

SWASTHIK ENTERPRISES, K.K. ROAD, KOZHIKODE, REPRESENTED BY ITS MANAGING PARTNER, P.K. HASHIR AHAMED.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.R.MURALIDHARAN (AROOR)

RESPONDENTS:
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1. SALES TAX APPELLATE TRIBUNAL, ADDL. BENCH, KOZHIKODE.

2. ASST. COMMISSIONER (ASSMT.) II, SPECIAL CIRCLE II, KOZHIKODE.

3. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER G.P. SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/11/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 55331 OF 2000 IN OP 32431 OF 2000

DISMISSED

14.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT IN TA NO. 66 OF 1996 DATED 3.3.97

EXT.P2 TRUE COPY OF THE PETITION FILED BY THE THIRD RESPONDENT BEFORE THE FIRST RESPONDENT IP 233 OF 1997 IN IP 32 OF 1996 IN TA NO. 66 OF 1996 DATED 13.11.1997

EXT.P3 TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT IN I.P.MNO. 233 OF 1997 IN T.A.NO. 66 OF 1996 DATED 10.8.2000

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 32431 OF 2000

Dated this the 14th day of November, 2007

JUDGMENT

Petitioner is challenging Ext. P3 order issued by the Tribunal under Section 43 of the KGST Act rectifying their earlier order which was in favour of the petitioner. Petitioner is a dealer in pepper, who claimed exemption from payment of turnover tax on the ground that the petitioner is the last purchaser of pepper remitting sales tax on their turnover. The Tribunal in fact originally allowed the appeal holding that petitioner having paid sales tax on their last purchase cannot be called upon to pay turnover tax which was payable by penultimate purchasers of pepper, as provided under Section 5(2a) of the KGST Act read with notification SRO 717/88. However on application by the department, the Tribunal reversed their earlier order and held that petitioner is liable to pay turnover tax also because they have not produced evidence for payment of turnover tax in the prescribed format by the dealer who has paid the same. Even though this court upheld the notification vide decision reported in 1993 KLJ (TC) 432, this Court

held that instead of declaration in the format prescribed under the notification, the dealer could prove fact of payment through other evidence. In this particular case, turnover in question is declared as turnover of last purchases by the petitioner which is the point of levy of sales tax for the commodity namely pepper. In other words, petitioner has paid sales tax as last purchaser and therefore petitioner cannot be treated as penultimate purchaser of the same commodity which alone make them liable for turnover tax. In the circumstances, the finding of the Tribunal that petitioner is liable to pay turnover tax for non-production of evidence for payment of turnover tax by other dealers is not sustainable. O.P. is therefore allowed vacating Ext.P3 and restoring Ext.P2 order of the Tribunal.

(C.N. RAMACHANDRAN NAIR)
Judge